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4 BEFORE THE HEARING PANEL OF THE
5 CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
6

7 In the Matter of:) **ADMINISTRATIVE DECISION**
8)
9 County of Los Angeles Local Enforcement) APPEAL OF THE CALIFORNIA
10 Agency, City of Los Angeles Local) INTEGRATED WASTE MANAGEMENT
11 Enforcement Agency, and North Valley) BOARD'S ACCEPTANCE AND
12 Coalition) PROCESSING OF BROWNING FERRIS
13) INDUSTRIES' APPLICATION FOR A
14) SOLID WASTE FACILITIES PERMIT FOR
15 vs.) A COMBINED SUNSHINE CANYON
16) LANDFILL, SYLMAR CALIFORNIA
17)
18 California Integrated Waste Management)
19 Board, purportedly acting as Enforcement) PUBLIC RESOURCES CODE §§ 44307,
20 Agency,) 44309 & 45030
21)
22 Respondent) Hearing
23) Date: May 13, 2008
24) Time: 1:30 p.m.
25) Location: Coastal Hearing Room, 2nd Floor,
26) Joe Serna Cal/EPA Building, 1001 I Street,
27) Sacramento, California

21 This matter came on regularly for hearing before the Hearing Panel of the California
22 Integrated Waste Management Board ("Hearing Panel") on May 13, 2008 at 1:30 p.m. Petitioner
23 the City of Los Angeles Local Enforcement Agency was represented by Keith Pritsker, attorney
24 at law. Petitioner the County of Los Angeles Local Enforcement Agency was represented by
25 Fred Pfaeffle, attorney at law. Petitioner the North Valley Coalition was represented by Isaac
26 Stevens, attorney at law. Respondent the CIWMB Staff ("Board Staff") was represented by

1 Steven Levine and Michael Bledsoe, attorneys at law. Browning Ferris Industries was
2 represented by R. Scott Pearson, attorney at law.

3 This matter before the Hearing Panel is an appeal by the City of Los Angeles Local
4 Enforcement Agency, the County of Los Angeles Local Enforcement Agency (collectively
5 "City/County"), and the North Valley Coalition ("NVC") of a determination by Staff of the
6 California Integrated Waste Management Board ("Board Staff"), purportedly acting as
7 Enforcement Agency, to process an Application for a Solid Waste Facilities Permit submitted by
8 Browning Ferris Industries ("BFI") for a Combined Sunshine Canyon Landfill. Requests for a
9 Hearing to Appeal Board Staff's determination were filed by City/County and NVC on February
10 15, 2008 and March 4, 2008, respectively, each accompanied by a Statement of the Issues on
11 Appeal.

12 This matter presents solely legal issues for the Hearing Panel to determine, the
13 City/County, NVC and Board Staff having stipulated to a Statement of Facts ("Stipulated Facts")
14 to be utilized as evidence herein, to the extent that the Hearing Panel deems such facts relevant
15 and for purposes of this appeal and any subsequent appeal to the Board only, in lieu of
16 proceeding with an evidentiary proceeding in this matter.

17 The Hearing Panel, having considered the record of the matter now pending, including
18 the written and oral arguments submitted by the parties and the Stipulated Facts, and also
19 including a late brief filed by the County of Los Angeles' Local Enforcement Agency responding
20 to the BFI Brief, to the extent they have been deemed relevant, and for good cause appearing,
21 hereby issues its Administrative Decision:

22 **ADMINISTRATIVE DECISION**

23 The appeal of Petitioners is denied and the determination by Board Staff to act as
24 Enforcement Agency for the processing of BFI's Application for a Solid Waste Facilities Permit
25 for a Combined Sunshine Canyon Landfill is upheld in its entirety.
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FINDINGS OF FACT RELEVANT FOR THIS DECISION

1. Browning Ferris Industries of California, Inc. ("BFI"), is currently the operator of two adjacent Class III Sanitary Refuse Disposal Facilities ("Landfills") located in the vicinity of Sylmar, California. One Landfill (the "County Landfill") is located within the unincorporated territory of the County of Los Angeles ("County"). The second Landfill (the "City Landfill") is located within the jurisdictional limits of the City of Los Angeles ("City"). (Stipulated Facts, No. 1.)
2. Since 1996, BFI has conducted operations at the County Landfill pursuant to Solid Waste Facilities Permit No. 19AA0853 (the "County SWF Permit"), which the County LEA issued with the concurrence of the CIWMB. (Stipulated Facts, No. 5.)
3. Since 2005, BFI has conducted operations within the City Landfill pursuant to Solid Waste Facilities Permit No. 19-AR-0002 (the "City SWF Permit"), which the City LEA issued with the concurrence of the CIWMB. (Stipulated Facts, No. 11.)
4. The CIWMB acknowledges that it does not have any authority to grant, modify, rescind or interpret land use entitlements granted by the City or the County to determine whether the conditions in either the County CUP or the City Zoning Amendment have been met and the CIWMB does not dispute that it has no standing to challenge or contradict the City or the County's determinations, to the extent they have been made, that BFI lacks final land-use approvals under the County CUP and the City Zoning Amendment. (Stipulated Facts, No. 13.)
5. While the City/County are in the process of designating the Sunshine Canyon Landfill LEA ("SCL-LEA"), the designation information package has not yet been submitted by the City/County to the CIWMB. Nor has the CIWMB yet approved an entity which has the authority under the California Integrated Waste Management Act to act as an LEA for processing the permit application for the combined City/County Landfill. (Stipulated Facts, No. 14.)
6. A Combined SWF Permit cannot be regulated or administered by two separate LEAs, either independently or through an agreement between the two LEAs. (Stipulated Facts, No. 15, on which the City/County take no position (City/Co. Br., p. 4).)
7. An SCL-LEA, once designated by the City and County and approved by the CIWMB, would administer any Combined SWF Permit and would regulate the Combined Landfill. Following formation, designation and certification of the SCL-LEA, the County LEA and the City LEA will continue to act as enforcement agencies in their jurisdictions for all facilities except Sunshine Canyon. (Stipulated Facts, No. 17.)
8. By letter dated June 26, 2007, the CIWMB notified the City and County Local Enforcement Agencies ("LEAs") that the CIWMB had been apprised by BFI of its

1 intent to file an application for a Combined SWF Permit. The CIWMB further
2 advised that it would assume responsibility for processing an application for a
3 Combined SWF Permit in the event the application for such a permit were to be filed
4 by BFI prior to the SCL-LEA being formed and completing the CIWMB certification
5 process, and that thus no LEA exists to receive and process the application. In said
6 letter the CIWMB further offered its assistance to help facilitate the City and County
7 efforts to form the SCL-LEA. (Stipulated Facts, No. 20.)

8 9. On January 8, 2008, BFI submitted to the CIWMB an application for a Combined
9 SWF Permit. (Stipulated Facts, No. 23.)

10 10. By letter dated January 15, 2008, the CIWMB acknowledged to BFI the CIWMB's
11 receipt of the application for a Combined SWF Permit. In said letter, staff of the
12 CIWMB acknowledged to BFI that it understood that submission of the application
13 was made on the basis that there is currently no LEA that can fully process a permit
14 application proposing one solid waste facilities permit for a facility spanning two
15 separate jurisdictions and, on that basis, that the CIWMB is now acting as the
16 Enforcement Agency for purposes of processing the application. (Stipulated Facts,
17 No. 24.)

18 11. The CIWMB provided the City and the County (with courtesy copies to their
19 respective LEAs) with a January 17, 2008, correspondence, attached to the Stipulated
20 Facts as "Attachment 1" (the "1-17 Rauh Ltr."), detailing the CIWMB's decision to
21 act as EA to process BFI's January, 2008, application for a Combined SWF Permit.
22 (Stipulated Facts, No. 25.)

23 12. The CIWMB intends to complete the processing of the application to issue the
24 Combined SWF Permit under the time line under the Public Resources Code and the
25 Title 27 California Code of Regulations, unless waived by BFI. (Stipulated Facts, No.
26 33.)

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CONCLUSIONS OF LAW

1. The Decision of Board Staff of CIWMB, Acting as the Enforcement Agency for the Combined Sunshine Canyon Landfill, To Process BFI's Application for a Solid Waste Facilities Permit Is Made Independently from Any Land Use Determinations Made by Local Land Use Authorities, such as the City of Los Angeles and the County of Los Angeles.

City/County¹ argue that Board Staff decided to act as EA for the Proposed Combined Landfill only after it determined that BFI had obtained land use entitlements from local land use authorities for the merger and joint operation of the then separate landfills. City/County Brief ("City/Co. Br."), p. 10, ll. 13-16. Board Staff argue, on the other hand, that LEAs and CIWMB carry out their statutory duties respecting SWF Permit applications independently from decisions made by land use authorities and other governmental agencies, no matter how essential those other decisions are to the establishment or operation of a solid waste facility. CIWMB Br., p. 11, ll. 1-4. State law is clear in distinguishing the land use function, which is within the realm of the local government, from the design and operation of solid waste facilities, which is the responsibility of CIWMB and LEA. Notwithstanding the Integrated Waste Management Act ("IWMA"), cities and counties "may determine...(1) Aspects of solid waste handling which are of local concern, including...[the] nature, location, and extent of providing solid waste handling services." Public Resources Code ("PRC") § 40059(a); see also, PRC § 43021 – CIWMB shall develop "standards for the design, operation, maintenance and ultimate reuse of solid waste facilities, but shall not include aspects of solid waste handling or disposal which are solely of local concern."

The fact that CIWMB amended its regulations in 2007 to delete a requirement that an

¹ It is the Hearing Panel's understanding, based on the parties' briefs, that NVC joins in the arguments of City/County, raising independently only the two arguments addressed later in this Administrative Decision. Accordingly, when reference is made herein to the arguments of "City/County," it is intended to incorporate the related arguments made by NVC in its brief.

1 applicant for a SWF Permit submit a copy of its land use entitlements to the LEA as part of its
2 application reinforces this conclusion. See, Title 27, California Code of Regulations (“CCR”), §
3 21570(f)(9). As explained in the Final Statement of Reasons accompanying the adopted
4 regulation, CIWMB stated that “[t]his subsection [former section 21570(f)(9)] is deleted to
5 remove the specific requirement that the operator include as part of a complete and correct
6 application package a copy of land use entitlements for the facility. This is necessary to avoid
7 promoting/creating any conflict between the local jurisdiction’s land use permit/entitlement and
8 the solid waste facilities permit process...State law has not mandated that the EA be an agency
9 required to verify if the information in the land use approval is correct or if the facility has the
10 approval of the local government to operate as proposed under a solid waste facilities permit.
11 The appropriate agency for making local land use determinations is the local government having
12 jurisdiction, in most cases, the city or county in which the facility is located.” Addendum, p. 1,
13 Final Statement of Reasons, December 2006.

14 Simply put, LEAs, and Board Staff when CIWMB is acting as the Enforcement Agency for
15 a jurisdiction, are governed by the IWMA in determining whether to process an application for a
16 SWF Permit. They are not governed by locally-imposed land use restrictions. Therefore, we
17 reject City/County’s assertion that local land use proscriptions which may prevent BFI from
18 operating the Combined Sunshine Canyon Landfill preclude BFI from applying to Board Staff
19 for a SWF Permit, when CIWMB is acting as EA.

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21 **2. Public Resources Code Section 43202 Imposes a Mandatory Duty Upon the**
22 **CIWMB to Act as Enforcement Agency for a Combined Landfill Straddling Two**
23 **Jurisdictions Where the Governing Bodies for These Jurisdictions Have Yet to**
24 **Complete the Designation Process for Establishing a Local Enforcement Agency to**
25 **Fulfill Such a Role.**

26 The IWMA calls for the CIWMB to act as the enforcement agency of last resort where,
27 among other cases, a governing body has failed to designate an LEA. Specifically, Public
Resources Code Section 43202 imposes a mandatory duty upon the CIWMB to assume such a

1 role: "If an enforcement agency is not designated and certified, the board, in addition to its other
2 powers and duties, shall be the enforcement agency within the jurisdiction...."

3 The specific circumstances here are unusual in that the City and County each have LEAs
4 designated and approved within their jurisdictions. Nevertheless, the City/County are not
5 challenging in these proceedings the premise that "a Combined SWF Permit cannot be legally
6 regulated or administered by two separate LEAs, either independently or through an agreement
7 between the two LEAs." (City/Co. Br., p. 4.) Thus the City/County are not asserting in this
8 appeal that the existing City and County LEAs could simply continue to exercise their
9 enforcement authority over their respective jurisdictional "sides" of the Combined Landfill and
10 forego a new LEA designation and approval process. Instead, for purposes of this appeal it is not
11 in dispute that there can only be one LEA for the Combined Landfill, and that the LEA
12 designation and approval process for such an LEA has yet to be completed. The Hearing Panel
13 notes that such a designation need not be of a newly established entity to serve the function of
14 the sole LEA (although that is apparently the City/County's preference). The City/County could
15 have designated either of their existing LEAs as the sole Enforcement Agency for the new
16 facility (or any other presently existing LEA for that matter) and (upon CIWMB approval) the
17 City/County would retain their jurisdictional authority. Yet where as here the City/County have
18 yet to bring to conclusion any of the above LEA designation alternatives, then there is an
19 "enforcement void" which the CIWMB is obliged to fill, as there presently is no LEA that can
20 process the application for the Combined Landfill.

21 Notwithstanding the fact that the required enforcement agency designation has yet to be
22 made by the City and County for the combined landfill, Board Staff's determination that it is
23 obliged to fill the "enforcement agency void" for permit application processing is challenged in
24 this appeal. The City and County contend that since each have made designations for their
25 respective jurisdictions, the statutory mandate has been fulfilled and thus the Board should not
26 step in as the enforcement agency. (City/Co. Br., Sec. A, p. 7.) Moreover, the enforcement
27 agency impasse created by the failure of the two governing bodies to designate an LEA for the

1 combined landfill could theoretically extend into perpetuity, effectively precluding the landfill
2 from ever combining unless and until the impasse is broken.

3 The above positions of the City and County are contrary to statutory intent. Clearly,
4 governing bodies play the principal role in the formation of landfills within their jurisdictions
5 through, among other means, their conditional use permit process. This assures that if the
6 CIWMB issues a SWF Permit for a facility which has not yet obtained such local approval for
7 formation (since the CIWMB does not interpret and acts irrespective of local land use
8 determinations), the permit would in essence be for a landfill that does not exist and would thus
9 have no force or effect or otherwise impact the jurisdictional authority of the governing bodies.
10 On the other hand, if local authority for formation is in place (albeit potentially subject to
11 conditions on certain "merged operations"), State law provides a mechanism for putting an
12 agency in place to enforce the permit, to assure that any potential void presented by the lack of a
13 local designation does not arise.

14 Finally, the statutory intent must be applied consistently regardless of whether one or
15 both of the jurisdictions in cases such as this desire that the Board "fill the void." For example,
16 hypothetically a situation could arise where a new landfill straddling two jurisdictions obtains
17 local approval for formation from both jurisdictions, yet the two governing bodies are at an
18 impasse in agreeing upon a single LEA for the combined landfill. Moreover, in this hypothetical
19 the new capacity offered by the merged landfill is critical to the capacity needs of at least one of
20 the jurisdictions. In such a case the impacted jurisdiction would likely be actively calling upon
21 the CIWMB to fulfill its responsibilities and step in so that the merged landfill could commence
22 operations and fulfill such critical capacity needs. If the Hearing Panel were to take the position
23 that the CIWMB is powerless to step in as enforcement agency in the case before us today, then
24 its hands would be similarly tied in the hypothetical presented above.
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1 **3. The appeal of Board Staff determination of the Combined Permit Application as**
2 **“complete” was not properly raised, argued, or supported by relevant evidence in**
3 **the record.**

4 City/County argued at the hearing that Board Staff had improperly found BFI's application
5 for a Combined Landfill SWFP to be complete because changes were being made to documents
6 that were a part of that application such as the Joint Technical Document. However, this issue
7 was not properly raised as it was not included in the Statement of Issues for Hearing. The County
8 asserted at the hearing that it was included in an amended Statement of Issues, but none was ever
9 received by the Hearing Panel or Counsel for the Hearing Panel. Furthermore, no legal
10 arguments were included regarding this issue by any of the petitioners in their briefs. When
11 questioned at the hearing, the County pointed to a stipulated fact (No. 43) that referenced an
12 attachment showing changes being made to the slope stability analysis in the application, but
13 nothing in that stipulation or attachment alleges, argues or explains how those documents relate
14 to or are determinative of the “completeness,” issue. Furthermore, there are no documents in the
15 record regarding the Board Staff determination that was supposedly being challenged that would
16 allow the Hearing Panel to review that determination. Therefore, petitioners did not provide the
17 Hearing Panel sufficient evidence to allow the Panel to deliberate on the issue, even if it had
18 been properly raised.
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21 **4. When CIWMB Is Acting as the Enforcement Agency, Hearings under Public**
22 **Resources Code Section 44307 Are Held by a Hearing Panel Appointed by the**
23 **Chair of the CIWMB Pursuant to Section 44309.**

24 NVC argues that, under PRC § 44307, a hearing must be held at the local level before it
25 may proceed to the level of CIWMB. NVC Brief, p. 7, ll. 19-26; p. 9, ll. 21-26. There is no such
26 requirement in law. Sections 44307 and 44308 provide, in relevant part, that a person who
27 alleges that the EA has failed to comply with law or regulation shall be provided a hearing before

1 the Hearing Panel or Hearing Officer. When CIWMB is acting as the EA for a jurisdiction,
2 hearings under Section 44307 must be heard by a three-member Hearing Panel appointed by the
3 Board's Chair. PRC § 44309. In this instance, CIWMB is acting as the EA regarding the
4 application in question, not the City LEA or the County LEA, since neither has jurisdiction over
5 the entire Landfill. CIWMB shall act as the EA when there is no local EA in place. PRC §§
6 43202, 43205(a). Therefore, CIWMB is acting in accord with applicable statutes by providing
7 Petitioners a hearing before CIWMB's Hearing Panel.
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10 **5. NVC's Claim That CIWMB Has Violated the California Environmental Quality**
11 **Act ("CEQA") Is Not Ripe for Adjudication because CIWMB Has Not Approved a**
12 **Proposed Project That Is Subject to CEQA.**

13 NVC also argues that CIWMB is proceeding in violation of CEQA (PRC §§ 21000, et
14 seq.) because, NVC alleges, the SWF Permit application BFI has submitted fails to satisfy
15 various CEQA requirements. NVC's argument is not ripe for adjudication. Board Staff of
16 CWIMB, acting as EA, has not made any decision to approve the SWF Permit application
17 submitted by BFI. CEQA requirements must be satisfied before a public agency approves a
18 project. Title 14, CCR, §§ 15074, 15090. Since CIWMB has not approved a SWF Permit for
19 the Landfill, it is premature for NVC to assert that CIWMB has violated CEQA.

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2 **6. NVC raised a number of issues that were not relevant to the legal issues in this**
3 **appeal.**

4 NVC raised a number of issues at the hearing, such as environmental justice and lack of public
5 participation. These issues were not relevant to the determination of legal issues that were being
6 considered by the Hearing Panel. Therefore, the Hearing Panel makes no findings regarding
7 those other issues.
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10 IT IS SO ORDERED
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12 Dated: 5-14-08
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16 Rosalie Mule, Chair
17 Hearing Panel
18 California Integrated Waste Management Board
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Case No.: NONE

I declare:

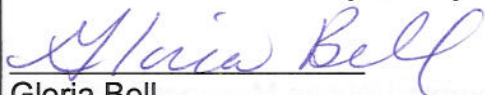
On May 15, 2008, I served the attached **Administrative Decision** by electronic mail by sending a true copy of the document identified above to the following persons at the indicated email addresses, which transmission was reported as complete and without error:

Kelly T. Smith
The Smith Firm
ktsmith@thesmithfirm.com

Steven Levine, Senior Staff Counsel
Michael Bledsoe, Senior Staff Counsel
slevine@ciwmb.ca.gov
mbledsoe@ciwmb.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 14th day of May 2008, at Sacramento, California.



Gloria Bell
Declarant